

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TINA J. WALKER,

Plaintiff,

vs.

CITY OF FREMONT, a political subdivision
of the State of Nebraska; SCOTT
GETZSCHMAN, in his official capacity as
mayor and individually; BRIAN NEWTON, in
his official capacity as city administrator and
individually; SHANE WIMER, in his official
capacity as assistant city administrator and
individually; and JOHN DOES 1-10,

Defendants.

8:19CV356

MEMORANDUM AND ORDER

This matter is before the Court on defendant's motion to dismiss Counts I and II against defendants Getzschman, Newton, and Wimer in their individual capacities and Counts V and VI in their entirety, pursuant to [Fed. R. Civ. P. 12\(b\)\(6\)](#). [Filing No. 10](#). Pursuant to [Fed. R. Civ. P. 12\(f\)](#), defendants also moved to strike plaintiff's claim for punitive damages against the City of Fremont and defendants Getzschman, Newton, and Wimer in their official capacities regarding Count IV, and all punitive damages asserted under Counts V and VI. [Filing No. 10](#). Plaintiff filed this action based on allegations that she was discriminated against on the basis of her sex in violation of [42 U.S.C. § 2000e-2](#) (Count I) and retaliated against in violation of Title VII and [42 U.S.C. § 2000e-3](#) (Count II). She further alleges violations of the Equal Pay Act ([29 U.S.C. § 206\(d\)\(1\)](#) et. seq.) (Count III), the First Amendment ([42 U.S.C. 1983](#)) (Count IV), Article 1, sections 5 and 19 of the Nebraska Constitution (Count V), and wrongful termination in violation of Nebraska public policy (Count VI). Complaint, [Filing No. 1](#).

Plaintiff sets forth the following alleged facts in her Complaint. Plaintiff Tina J. Walker (herein “Walker”) has been employed by the City of Fremont since July of 2016, most recently as the Library Director. She initially reported to defendant Brian Newton (hereinafter “Newton”), who served the City of Fremont as the City Administrator. She was later supervised by the Assistant City Administrator, defendant Shane Wimer (hereinafter “Wimer”). At all relevant times, defendant Scott Getzschman (hereinafter “Getzschman”) was the elected Mayor of the City of Fremont. Walker alleges she was harassed for several months by her supervisor, defendant Newton. In September of 2017, Walker reported to the City Council that Newton had lied to the City Council and violated the City’s Union Contract. The next day, Walker alleges she was disparaged, reprimanded, and told by Getzschman not to speak at City Council meetings unless called upon to do so.

On September 18, 2017, Walker filed a written complaint of gender discrimination and retaliation against Newton and Getzschman with the City Attorney. An outside law firm was brought in to investigate Walker’s claims. Walker alleges she began to receive negative written performance evaluations, even though she was verbally told by Wimer that her work was outstanding. On February 20, 2018, Walker’s attorney notified the H.R. Director that Walker had retained counsel and would be filing an Equal Employment Opportunity Commission (EEOC) and Nebraska Equal Employment Opportunity Commission (NEOC) complaint, in addition to anticipated litigation. Eight days later, Walker received an updated performance evaluation that was more negative than the original versions. Additionally, she alleges she was only given a cost of living raise while Newton and Wimer received raises substantially higher than what Walker received.

The parties agree that defendant's motion to dismiss Counts I and II for defendants Getzschman, Newton and Wimer in their individual capacities, and Count V in its entirety, should be granted. Defendant's Motion, [Filing No. 10](#); Plaintiff's Opposition Brief, [Filing No. 12](#). The parties also agree that defendant's motion to strike plaintiff's claims for punitive damages should be granted for the City of Freemont and Getzschman, Newton, and Wimer. *Id.* Additionally, they agree that punitive damages against all defendants should be stricken for Counts V and VI. *Id.* The Court will grant the motion with respect to the agreed upon claims.

Plaintiff has requested leave from the Court to file an amended complaint with greater specificity for Counts I, II, III and IV. [Filing No. 12](#). The Court has reviewed the documents submitted by both parties and will grant plaintiff's request. The Court will permit the plaintiff to file an amended complaint, if she so chooses, that complies with the requirements of Fed. R. Civ. P. 12(b).

Plaintiff additionally objects to defendant's motion to dismiss Count V of the complaint (violation of the Nebraska Constitution). [Filing No. 12](#). The Court also finds that plaintiff has not clearly stated a cause of action and this Count requires more to survive a motion to dismiss under [Fed. R. Civ. P. 12\(b\)\(6\)](#). Plaintiff has requested the Court's permission to file an amended complaint with more specificity. The Court will likewise grant this request

The Magistrate Judge gave the plaintiff until April 6, 2020, to amend her complaint. [Filing No. 15](#), Text Order. The Court agrees and will adopt the same date in this Memorandum and Order.

THEREFORE, IT IS ORDERED that:

1. The motion to dismiss and motion to strike, [Filing No. 10](#) is granted as set forth herein.
2. Plaintiff has until April 6, 2020 to file an amended complaint with the Court.

Dated this 30th day of March, 2020.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge